

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6124

PETITION OF ROBERT L. SHERMAN
(Hearing held March 29, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, May 12, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes the construction of a two-story addition that requires a variance of 8.50 feet as it is within 26.50 feet of the rear lot line. The required setback is thirty-five (35) feet.

Dan Hauprich of Creative Wood Concepts appeared with the petitioner at the public hearing.

The subject property is Lot 12, Bowie Mill Park Subdivision, located at 17536 Bowie Mill Road, Derwood, Maryland, 20855, in the RE-2 Zone (Tax Account No. 02383726).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 24.4 x 20 foot two-story addition.
2. The petitioner testified that his property is a rectangularly shaped, pipe-stemmed lot, with the residence located in the southwest corner of the property. The petitioner testified that his most impacted neighbor is located at a higher elevation and that the new construction will be screened from the neighboring property by a tree line.
3. Mr. Hauprich testified that the addition was designed to provide the best access to the house and to provide access to the house's existing bedrooms. Mr. Hauprich testified that the subject property has the smallest acreage in the subdivision and that an existing deck would be

removed and replaced with the two-story addition. The subject property is 2.24 acres.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the pipe-stemmed shape of the subject property is distinctive, this shape is shared with all of the other lots in the petitioner's subdivision and, aside from the pipestem for access, the site is regularly shaped. The Board finds that the characteristics of the petitioner's lot are not "conditions peculiar to a specific parcel of property" that cause the strict application of the Zoning Ordinance to have a disproportionate impact on the subject property. The Board also finds that the location of the house on the subject property is not a factor the Board can take into account in evaluating the petition for a variance. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994)).

The Board notes that the subject property exceeds the minimum lot size for the RE-2 Zone. See Exhibits 4 [site plan] and 7(a) [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 8.50 feet from the required thirty-five (35) foot rear lot line setback for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 12th day of May, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.